

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE LOUIS A. TELERICO  
*Debtor*

CASE No. 17-50236  
CHAPTER 11  
JUDGE ALAN M. KOSCHIK

**MOTION OF LOUIS A. TELERICO DEBTOR AND DEBTOR IN POSSESSION FOR AUTHORITY TO  
COMPROMISE CONTROVERSIES WITH STIFEL, NICOLAS & COMPANY, INC.**

Louis A. Telerico Debtor and Debtor in Possession (“Debtor”), moves the Court pursuant to 11 U.S.C. §§ 506(d), 507, 544 and 551 and Federal Rule of Bankruptcy Procedure 9019(a) for an order approving a settlement of a certain pre-petition claims with Stifel, Nicolas & Company, Inc. (“Stifel”).

**BACKGROUND**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334(a) and (e) and General Order 84 of the United States District Court for this District. This is a core proceeding in which the Court may enter a final order pursuant to 28 U.S.C. §157(b)(2)(A),(B) and (O).
2. Debtor is the Trustee of the Louis A. Telerico 2010 Amended and Restated Revocable Trust Indenture dated February 1, 2010 (hereinafter referred to along with the predecessor trusts described below as the “Trust”). The Trust amended and restated the Debtor’s 2007 Amended and Restated Revocable Trust dated April 30, 2007, which itself amended and restated the Debtor’s Elaine J. Telerico Revocable Trust dated November 4, 1992. Under the 2010 Trust indenture all property of the prior trusts became property of the Trust.
3. Among the assets titled in the Trust is a house and approximately 2 acres of land at 545 Bristol Dr., Aurora Ohio, identified by permanent parcel number 03-016-00-00-173-003 and used by the Debtor as his residence (“Home”), and three adjacent parcels of land one at 132 Bristol Drive, Aurora Ohio identified by permanent parcel number 03-016-00-00-177-000 (“Bristol Parcel”) and Lot 130-A, 130-R, and 133 Glengarry Drive, Aurora, Ohio 44202 and

identified by permanent parcel numbers 03-016-00-00-173-001 and 03-016-00-00-173-002 (collectively the “Glengarry Parcels” and with the Bristol Parcel the “Parcels” and both collectively with the Home, the “Real Estate”).

4. The Home has an appraised value of \$4,000,000.00 and the Parcels have an appraised value collectively of \$473,000.

5. Brad Cromes, Treasurer for Portage County Ohio (“Portage County Treasurer”) has a real estate tax lien against the home in the amount of \$424,793.37 that is a first priority lien against the Home, a real estate tax lien against the Glengarry Parcels in the amount of \$10,911.33 and \$13,065.02 that is a first priority lien against them, and a real estate tax lien against the Bristol Parcel in the amount of \$4,051.89 that is a first priority lien against it.

6. On or about July 25, 2001 the Debtor executed a promissory note payable to Bank of America NA (“BOA”) in the principal amount of \$3,000,000.00 (“BOA Note”). To secure repayment of the Note on or about the same date the Trust as mortgagor gave to BOA a mortgage interest in the House that is a second priority lien against it.

7. On March 31, 2017 BOA filed proof of claim no. 11 in the Debtor’s bankruptcy case asserting that \$3,732,925.43 was owed on the BOA Note.

8. On or about December 4, 2009 the Debtor executed a promissory note payable to Stifel in the principal amount of up to \$400,000.00 (“Stifel Note”). To secure repayment of the Note on or about the same date the Trust as mortgagor gave to Stifel a deed of trust granting it a mortgage interest in the Real Estate that is a second priority lien against the Parcels although a third priority mortgage against the House (“Stifel Mortgage”).

9. On June 14, 2017, Stifel filed two proofs of claim: (i) a secured claim (the “Secured Claim”) in the amount of \$430,414.61 for amounts outstanding on the Stifel Note; secured and perfected

by a deed of trust on the Real Estate, as more fully described in proof of claim number 20 and related exhibits; and (ii) an unsecured claim (the “Unsecured Claim” and, together with the Secured Claim, the “Stifel Claims”) in the amount of \$125,156.75 for amounts outstanding on a promissory note and related advanced tax payments as more fully described in proof of claim number 21 and related exhibits.

10. On or about August 23, 2011 BOA filed a foreclosure proceeding against the Debtor in the Portage County Court of Common Pleas styled *Bank of America Nat’l Banking Assoc. v. Louis A. Telerico, et al.*, Case No. 2011-CV-1105 (“Foreclosure Action”) seeking to foreclose on the BOA Mortgage against the Home.

11. The Debtor believes that the Stifel Note and Mortgage were in fact transactions to disguise an advance of commissions to the Debtor that he would earn as a broker for Stifel. In 2013 the Debtor commenced an arbitration proceeding against Stifel and others with the Financial Industry regulatory Authority (FINRA) alleging fraud and breach of contract among other things, and asserting that his claims exceeded the amount due on the Stifel Note (“Arbitration”). That Arbitration was stayed by the filing of this bankruptcy case.

12. In 2013 Stifel filed a motion for summary judgment in the Foreclosure Action on the Stifel Note which was granted on March 4, 2015.

13. On February 5, 2017 the Debtor filed this bankruptcy case.

14. On January 25, 2018 the Debtor file an adversary proceeding *Louis A. Telerico, Debtor-in-Possession v. Portage County Treasurer et al.* Adv. No. 18-5008 (“Adversary”). In the Adversary the Debtor seeks to determine the extent, validity and priority of various liens and interests in the Real Estate, and in particular alleged that with regard to the Stifel Note and Mortgage his claims exceeded the amount due on the Stifel Note.

15. On February 26, 2018 Stifel filed a motion to dismiss the Adversary as to it based in part on the judgment it obtained in the Foreclosure Action. The Debtor opposed Stifel's motion on March 15, 2018 and it remains pending with this Court.

16. On June 12, 2018 the Debtor filed his Plan of Reorganization Version 1.3 of the Debtor [Doc.114] ("Plan").

17. On August 2, 2018 Stifel submitted a ballot rejecting the Plan.

**PROPOSED COMPROMISE**

18. The Debtor requests that the Court approve as a compromise with Stifel for \$125,000 as described in the proposed settlement agreement attached as Exhibit A (any final agreement will be substantially in the form of Exhibit A). The proposed compromise will be paid from the net proceeds of sale of the Parcels, one of which is the subject of a separate motion to sell free and clear of liens, and other similar such motions to sell may be filed in the future. The Stifel liens will be released against (i) the Home upon approval of the proposed compromise and Stifel's receipt of 50% of the settlement payment; and (ii) the Parcels upon approval of the proposed compromise and Stifel's receipt of 100% of the settlement payment. In addition the Debtor and the estate will release Stifel from any and all claims, including but not limited to those raised in the Arbitration, and Stifel will be dismissed from the Adversary with prejudice pursuant to an agreed upon judgment in the form attached to the settlement agreement.

19. In return, Stifel will release the estate from any other claim other than the \$125,000, the Stifel Mortgage will be avoided in its entirety against the Home (upon receipt of 50% of the settlement payment), and the Stifel Mortgage in excess of \$125,000 against the Parcels will be avoided and preserved for the benefit of the estate pursuant to 11 U.S.C. §551 upon Stifel's receipt of 100% of the settlement payment.

20. The Plan will be modified to reflect these agreements and Stifel will vote to accept the modified plan.

THEREFORE, the Debtor respectfully requests that this Court enter an order approving the proposed compromise with Stifel Nicolas.

Respectfully submitted,  
/s/ Frederic P. Schwieg, Esq.

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### **CERTIFICATE OF SERVICE**

A copy of this Motion to Compromise was served on the following on August 10, 2018 filed by Notice of Electronic Filing or email.

The following is a list of the parties who are on the list to receive e-mail notice/service for this case:

**17-50236 Notice will be electronically mailed to the U.S. Trustee, and:**

Todd A. Atkinson on behalf of Defendant Stifel Nicolaus & Company, Inc.  
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/s/ Frederic P. Schwieg

Frederic P. Schwieg

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: LOUIS TELERICO	)	CASE NO. 17-50236
	)	JUDGE ALAN M. KOSCHIK
Debtor	)	CHAPTER 11

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LOUIS A. TELERICO, Debtor-in-Possession	)	
	)	
Plaintiff	)	
vs.	)	ADVERSARY NO. 18-5008
	)	
TREASURER, PORTAGE COUNTY, OHIO,	)	
et. al.	)	
	)	
Defendants	)	

**AGREED JUDGMENT ENTRY DETERMINING THE VALIDITY,  
PRIORITY AND AMOUNTS OF STIFEL, NICOLAUS &  
COMPANY INCORPORATED'S LIEN CLAIMS**

This cause came on for consideration of the Court upon the Complaint to Determine Validity, Priority and Amount of Lien Claims ("Complaint") filed by Plaintiff Louis A. Telerico ("Plaintiff" or the "Debtor"), the Motion to Dismiss of Defendant Stifel Nicolaus & Company, Inc. [Adv. Doc. 16] ("Stifel" and "Motion") and the Plaintiffs response thereto [Adv. Doc. 27]. After consideration of the pleadings and by agreement of the undersigned parties, this Court FINDS:

1. Jurisdiction of the within proceeding is vested in this Court by virtue of the provisions of 28 U.S.C. §157 as enacted and effective on July 10, 1984 as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Local General Order No. 84, entered on July 16, 1984 by the United States District Court for the Northern District of Ohio, and 28 U.S.C. §1334.

2. Venue of this proceeding is proper in this district and division pursuant to 11 U.S.C. §§1408 and 1409.

<b>EXHIBIT A</b>
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3. This proceeding constitutes a core proceeding pursuant to 28 U.S.C. §157(b)(2)(K).

4. The Court having granted the Motion of Louis A. Telerico Debtor and Debtor in Possession for Authority to Compromise Controversies with Stifel, Nicolas & Company, Inc. in the bankruptcy case [Main Case Doc. \_\_\_\_]

5. The Debtor commenced his bankruptcy case by the filing of a voluntary petition seeking relief under Chapter 11 of Title 11 of the United States Code on February 5, 2017 (the “Petition Date”) in the United States Bankruptcy Court for the Northern District of Ohio, assigned case number 17-50236 (the “Bankruptcy Case”).

6. On January 25, 2018, the Debtor commenced this adversary proceeding with the Court against Stifel and others, seeking to determine the validity, priority or extent of liens on certain real property of the Debtor, including Stifel's lien on real property known as 545 Bristol Drive, Aurora, Ohio 44202 and identified by Portage County permanent parcel number 03-016-00-00-173-003 (the “Home”), Lot 130-A, 130-R and 133 GlenGarry Drive, Aurora, Ohio 44202 (the “GlenGarry Parcels”), and 132 Bristol Drive, Aurora, Ohio 44202 (the “Bristol Parcel”) and identified by Portage County permanent parcel numbers 03-016-00-00-173-001, 03-016-00-00-173-002, and 03-016-00-00-177-000 (collectively, the GlenGarry Parcels and Bristol Parcel are defined herein as the “Parcels”), as more fully described in proof of claim number 20 and related exhibits.

7. Defendant Brad Cromes Treasurer for Portage County Ohio (the “Treasurer”) has a real estate tax lien against the Glengarry Parcels in the amount of \$10,911.33 and \$13,065.02 that is a first priority lien against them, and a real estate tax lien against the Bristol Parcel in the amount of \$4,051.89 that is a first priority lien against it. The Treasurer has filed an answer

asserting that he has the first and best lien on the Parcels for real property taxes and assessments (collectively, the “Taxes”).

8. Defendant Stifel has filed a motion to dismiss the Complaint. Stifel asserts that it is the holder of a mortgage (the “Stifel Mortgage”) on the Parcels which is the first and best lien on the Parcels after the Taxes.

9. The Stifel Mortgage was recorded with the Recorder of Portage County on January 25, 2010 and recorded as instrument number 201001063 of the Portage County Records. Stifel is hereby determined to have a valid mortgage and the first and best lien on the Parcels, subject only to the Taxes.

10. Stifel asserts it has a secured claim in the amount of \$430,414.61 as of the Petition Date. Pursuant to a settlement agreement, Stifel has agreed that it will accept \$125,000 in cash from the sale of the Parcels and, upon full receipt of such payment, its lien under the Stifel Mortgage may be avoided for the benefit of the estate.

11. As indicated by their counsel’s signatures below, the undersigned parties have consented to the entry of this Agreed Judgment Entry.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

A. After costs of sale, the Treasurer is determined to have the first and best lien in the Parcels and Stifel is determined to have the second best lien in the Parcels. Upon approval of the sale of one or more of the Parcels, the funds derived from any of the sale proceeds (“Funds”), shall be distributed as follows:

- i. First, to pay the costs of sale and any sale commissions related to the Parcels;
- ii. Second, to pay the Treasurer the Taxes due and payable on the Parcels;
- iii. Third, to Stifel, up to the aggregate amount of \$125,000;

- iv. Fourth, the remaining sale proceeds (“Net Proceeds”), after payment of (i) through (iii) above, shall be distributed to the Debtor’s estate representative, subject to further order of the Court.
- B. Stifel’s lien on the Home is hereby be avoided pursuant to 11 U.S.C. §§506(d), 544 and 551 for the benefit of the Debtor’s estate.
- C. Upon Stifel’s receipt of \$125,000, Stifel’s lien on Parcels shall be avoided pursuant to 11 U.S.C. §§506(d), 544 and 551 for the benefit of the Debtor’s estate.
- D. The Bankruptcy Court shall retain jurisdiction to interpret and enforce this Order.

# # #

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